

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWIN ZAYAS, Individually and on Behalf of
All Others Similarly Situated

Plaintiffs,

Docket No.:
21-CV10131(LJL)

-against-

ANSWER

DORAL REALTY LLC and WEST 21 DELI
AND GROCERY CORP.

Defendants.

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Defendant, WEST 21 DELI AND GROCERY CORP., by and through their attorneys HARFENIST KRAUT & PERLSTEIN, LLP, as and for their Answer to the Complaint dated November 29, 2021, allege as follows:

1. Denies the allegations contained in paragraph 1 of the Complaint.
2. Denies the allegations contained in paragraph 2 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.
3. Denies the allegations contained in paragraph 3 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.
4. Denies the allegations contained in paragraph 4 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.
5. Admits the allegations contained in paragraph 5 of the Complaint.
6. Admits the allegations contained in paragraph 6 of the Complaint.
7. Admits the allegations contained in paragraph 7 of the Complaint.
8. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the Complaint.

9. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 9 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of the Complaint.

11. Denies the allegations contained in paragraph 11 of the Complaint, but admits WEST 21 DELI AND GROCERY CORP. is a New York domestic business corporation authorized by the Secretary of the State of New York to do business in New York State.

12. Admits the allegations contained in paragraph 12 of the Complaint.

13. Denies the allegations contained in paragraph 13 of the Complaint.

14. Denies the allegations contained in paragraph 14 of the Complaint.

15. Denies the allegations contained in paragraph 15 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 16 of the Complaint.

17. Admits the allegations contained in paragraph 17 of the Complaint.

18. Denies the allegations contained in paragraph 18 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

19. Denies the allegations contained in paragraph 19 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

20. Denies the allegations contained in paragraph 20 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

21. Denies the allegations contained in paragraph 21 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

22. Denies the allegations contained in paragraph 22 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

23. Denies the allegations contained in paragraph 23 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

24. Denies the allegations contained in paragraph 24 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

25. Denies the allegations contained in paragraph 25 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

26. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 26 of the Complaint.

27. Admits the allegations contained in paragraph 27 of the Complaint.

28. Denies the allegations contained in paragraph 28 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

29. Denies the allegations contained in paragraph 29 of the Complaint and leave all questions of law to be determined by the Court at the time of trial.

30. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 30 of the Complaint.

31. Denies the allegations contained in paragraph 31 of the Complaint, but admits that West 21 Deli and Grocery is located at 215 8th Avenue, New York, NY.

32. Admits the allegations contained in paragraph 32 of the Complaint.

33. Denies the allegations contained in paragraph 33 of the Complaint.

34. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 34 of the Complaint.

35. Denies the allegations contained in paragraph 35 of the Complaint.
36. Denies the allegations contained in paragraph 36 of the Complaint.
37. Denies the allegations contained in paragraph 37 of the Complaint.
38. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 38 of the Complaint.
39. Denies the allegations contained in paragraph 39 of the Complaint.
40. Denies the allegations contained in paragraph 40 of the Complaint.
41. Denies the allegations contained in paragraph 41 of the Complaint.
42. Denies the allegations contained in paragraph 42 of the Complaint.
43. As for an answer to paragraph 43 of the Complaint, Defendants repeat and reallege all responses contained in paragraphs 1 through 42 of this answer as if more fully set forth hereat.
44. Denies the allegations contained in paragraph 44 of the Complaint.
45. Denies the allegations contained in paragraph 45 of the Complaint.
46. Denies the allegations contained in paragraph 46 of the Complaint.
47. Denies the allegations contained in paragraph 47 of the Complaint.
48. Denies the allegations contained in paragraph 48 of the Complaint.
49. Denies the allegations contained in paragraph 49 of the Complaint.
50. Denies the allegations contained in paragraph 50 of the Complaint.
51. Denies the allegations contained in paragraph 51 of the Complaint.
52. Denies the allegations contained in paragraph 52 of the Complaint.
53. Denies the allegations contained in paragraph 53 of the Complaint.
54. Denies the allegations contained in paragraph 54 of the Complaint.
55. Denies the allegations contained in paragraph 55 of the Complaint.

56. Denies the allegations contained in paragraph 56 of the Complaint.
57. Denies the allegations contained in paragraph 57 of the Complaint.
58. Denies the allegations contained in paragraph 58 of the Complaint.
59. Denies the allegations contained in paragraph 59 of the Complaint.
60. Denies the allegations contained in paragraph 60 of the Complaint.
61. Denies the allegations contained in paragraph 61 of the Complaint.
62. Denies the allegations contained in paragraph 62 of the Complaint.
63. Denies the allegations contained in paragraph 63 of the Complaint.
64. Denies the allegations contained in paragraph 64 of the Complaint.
65. Denies the allegations contained in paragraph 65 of the Complaint.
66. As for an answer to paragraph 66 of the Complaint, Defendants repeat and reallege

all responses contained in paragraphs 1 through 65 of this answer as if more fully set forth hereat.

67. Admits the allegations contained in paragraph 67 of the Complaint.
68. Denies the allegations contained in paragraph 68 of the Complaint.
69. Denies the allegations contained in paragraph 69 of the Complaint.
70. Denies the allegations contained in paragraph 70 of the Complaint.
71. Denies the allegations contained in paragraph 71 of the Complaint.
72. Denies the allegations contained in paragraph 72 of the Complaint.
73. Denies the allegations contained in paragraph 73 of the Complaint.
74. Denies the allegations contained in paragraph 74 of the Complaint.
75. As for an answer to paragraph 75 of the Complaint, Defendants repeat and reallege

all responses contained in paragraphs 1 through 74 of this answer as if more fully set forth hereat.

76. Denies the allegations contained in paragraph 76 of the Complaint.

77. Denies the allegations contained in paragraph 77 of the Complaint.
78. Denies the allegations contained in paragraph 78 of the Complaint.
79. Denies the allegations contained in paragraph 79 of the Complaint.
80. As for an answer to paragraph 80 of the Complaint, Defendants repeat and reallege all responses contained in paragraphs 1 through 79 of this answer as if more fully set forth hereat.
 81. Denies the allegations contained in paragraph 81 of the Complaint.
 82. Denies the allegations contained in paragraph 82 of the Complaint.
 83. Denies the allegations contained in paragraph 83 of the Complaint.
 84. Denies the allegations contained in paragraph 84 of the Complaint.
 85. Denies the allegations contained in paragraph 85 of the Complaint.
 86. Denies the allegations contained in paragraph 86 of the Complaint.
 87. Denies the allegations contained in paragraph 87 of the Complaint.
 88. As for an answer to paragraph 88 of the Complaint, Defendants repeat and reallege all responses contained in paragraphs 1 through 87 of this answer as if more fully set forth hereat.
 89. Denies the allegations contained in paragraph 89 of the Complaint.
 90. Denies the allegations contained in paragraph 90 of the Complaint.
 91. Denies the allegations contained in paragraph 91 of the Complaint.
 92. Denies the allegations contained in paragraph 92 of the Complaint.
 93. Denies the allegations contained in paragraph 93 of the Complaint.
 94. Denies the allegations contained in paragraph 94 of the Complaint.
 95. Denies the allegations contained in paragraph 95 of the Complaint.
 96. Denies the allegations contained in paragraph 96 of the Complaint.

97. As for an answer to paragraph 97 of the Complaint, Defendants repeat and reallege all responses contained in paragraphs 1 through 96 of this answer as if more fully set forth hereat.

98. Denies the allegations contained in paragraph 98 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

99. The Complaint fails to state a claim, in whole or in part, upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

100. Some or all of the Plaintiff's claims are barred by the applicable statute of limitations and/or other statutory or other provisions of law.

THIRD AFFIRMATIVE DEFENSE

101. Plaintiff lacks standing to bring the claims asserted herein and lacks standing to obtain the relief requested.

FOURTH AFFIRMATIVE DEFENSE

102. Any action alleged that allegedly adversely affected Plaintiff was taken in good faith and for legitimate business reasons.

FIFTH AFFIRMATIVE DEFENSE

103. Plaintiff's claim should be dismissed, in whole or in part, because Plaintiff's claims and the claims of each putative member of the purported class defined in the Complaint are barred in whole or in part because any alleged modifications (if they were made) do not trigger the "alteration" legal standard.

SIXTH AFFIRMATIVE DEFENSE

104. Defendant did not act with bad faith, evil motive, willfulness, malice or reckless indifference toward the Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

105. The applicable law does not entitle Plaintiff to recover compensatory or punitive damages as to some or all of the claims.

EIGHTH AFFIRMATIVE DEFENSE

106. There are no barriers to accessibility at the property at issue in this case. Assuming, arguendo, that any barriers as alleged do exist, their removal is not readily achievable in whole or in part and they do not materially affect accessibility. The removal of any alleged barriers is also not readily achievable because it would create an undue burden and would require difficulty and a high cost of expenses.

NINTH AFFIRMATIVE DEFENSE

107. All actions taken with regard to the design and construction of the property in question were taken in good faith and for legitimate, lawful business reasons and predate the passage of the ADA and may not be a basis for liability.

TENTH AFFIRMATIVE DEFENSE

108. Defendant has provided equivalent facilitation and/or appropriate means for patrons with disabilities to enjoy services at the property.

ELEVENTH AFFIRMATIVE DEFENSE

109. Plaintiff's claims are barred in whole or in part because Plaintiff was not a bona fide patron of the facility in question, but visited it for purposes of instituting the instant litigation.

TWELFTH AFFIRMATIVE DEFENSE

110. Plaintiff's alleged damages under the New York State Civil Rights Law §40-d are capped at no more than \$500 violation.

THIRTEENTH AFFIRMATIVE DEFENSE

111. Accessible Means of Egress are not required in Existing Buildings by the 2010 ADA Standards.

Dated: Lake Success, New York
March 31, 2022

HARFENIST KRAUT & PERLSTEIN LLP

By:

sl Neil Torczyner
Neil Torczyner
Attorneys for WEST 21 DELI AND GROCERY CORP
3000 Marcus Avenue, Suite 2E1
Lake Success, New York 11042
P: (516) 355-9612
F: (516) 355-9613
E: ntorczyner@hkplaw.com

To: James E. Bahamonde
Law Offices of James E. Bahamonde, PC
Attorneys for Plaintiff
2501 Jody Court
North Bellmore, NY 11710
P: (516)-783-9662
F:(646)-435-4376
E: James@CivilRightsNY.com